

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

April 21, 2022 at 10:00 a.m.

1. [22-90028](#)-E-7
[KEH-1](#)

SHAWN SALINAS
David Johnston

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-22-22 [\[23\]](#)

BALBOA THRIFT & LOAN VS.

**APPEARANCES OF
KEITH HERRON, ESQ. (Attorney for Movant)
AND
DAVID C. JOHNSON, ESQ. (Attorney for Debtor)
REQUIRED FOR THE APRIL 21, 2022 HEARING
TELEPHONIC APPEARANCE PERMITTED (FOR NOW)**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on March 22, 2022. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is dismissed without prejudice.
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April 21, 2022 at 10:00 a.m.

Balboa Thrift & Loan (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2019 Hyundai Accent Sedan 4D, VIN ending in 6058 (“Property”). The moving party has provided the Declaration of Mike Bordwell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Shawn Gregory Salinas (“Debtor”).

The Motion, states with particularity (as required by Fed. R. Bankr. P. 9013) the following grounds upon which the requested relief is based:

- A. That the Motion is made pursuant to 11 U.S.C. § 362(d)(1) and (d)(2). Motion, p. 2:1; Dckt. 23.
- B. The grounds for the Motion are:
 - 1. “[M]ovant’s interest in the personal property is not adequately protected” and
 - 2. “[i]t is not necessary for an effective organization.” *Id.*, p.2:2-3.
- C. “The motion is based upon all of the documents, records and evidence on file in this instant case, together with the Notice of Motion, the Motion and Declaration of Movant filed and served concurrently herewith, and such additional documents, records, evidence, and argument of counsel may be presented.” *Id.*, p. 2:4-8.
- D. Movant alleges:
 - 1. “Movant is the holder of a Retail Installment Sales Contract payable by the Debtor(s) with a present balance of (\$15,758) . . .”
 - 2. “[s]ecured by a Certificate of Title . . . encumbering personal property . . . knows as a 2019 Hyundai Accent Sedan 4D, . . .”
 - 3. “Cause exists to grant this motion because the balance due to Movant is rapidly increasing and Movant’s security interest is in jeopardy unless this Court grants the requested relief.”
 - 4. “If Movant is not permitted to foreclose its security interest in the Property, it will suffer irreparable injury, loss and damage.” *Id.*, ¶¶ 1, 2, 3, 4.

The above are not “grounds stated with particularity,” but mere legal conclusions dictated to the court. Simple things like the value of the Vehicle, what is alleged to constitute cause, what “irreparable harm” will befall Movant, or how Movant is not adequately protected are not stated.^{FN.1.}

FN. 1. In reviewing the Declaration filed by Movant, Dckt. 27, the court notes the following. The Declaration does not state that the testimony therein is true and correct, but only that it “[i]s true and correct to the best of my [the declarant] knowledge. . . .”

As stated, the information in the Declaration may be wholly inaccurate if the Declarant’s “knowledge” consists of what he is told needs to be in the Declaration for Movant to win. For declarations

executed within the United States, Congress provides a very simple statement attesting to the testimony being made under penalty of perjury:

If executed within the United States, its territories, possessions, or commonwealths:
“I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
(Signature)”.

28 U.S.C. § 1746(2). The witness states that the testimony is true and correct, not merely “true and correct to the best of my knowledge.” The Declarant choosing to qualify his testimony by the “best of my knowledge” appears to be admitting that the Declarant does not know if the testimony is true which he is providing under penalty of perjury.

The court also notes that Movant has failed to comply with the court’s simple rule that motions, points and authorities, each declaration, and the exhibits (which may be combined in one exhibit pleading) must be filed as separate documents. L.B.R. 9004-2, 9014-1(c)(1), (d) and 9014-1(d).

Movant has included 11 pages of exhibits attached to the Declaration. Some of the pages are completely illegible, with some handwritten information apparently added thereto. Declaration, Attached Exhibits, p. 7, 9, and 10 ; Dckt. 27.

Request For Relief Not Stated With Particularity

Here, Movant does not state the legal basis for the request relief required under the Local Rules and Federal Rules of Bankruptcy Procedure. Debtor merely states facts and a requests for their Motion to be granted.

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. That “state with particularity” requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court’s repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the “state with particularity” requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the “short and plain statement” standard for a complaint.

Furthermore, Local Rule 9014-1 provides that “[t]he application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party’s request but does not include a discussion of those authorities or argument for their applicability.”

There are no grounds stated, but mere legal conclusions. Additionally, Movant directs the court to go an canvas “all of the documents, records and evidence on file in this instant case, together with the Notice of Motion, the Motion and Declaration of Movant filed and served concurrently herewith, and such additional documents, records, evidence, and argument of counsel may be presented” to assemble what grounds the court would believe that Movant would state (subject to the certifications made pursuant to Fed. R. Bankr. P. 9011), effectively making the court to serve as assisting counsel for Movant.

DEBTOR’S RESPONSE

Debtor has chosen not to file an opposition to this Motion. Rather, Debtor has dumped on the court some evidence (Declaration of Debtor, Dckt. 29), but no opposition to which the evidence relates. As did the Movant, Debtor appears to be instructing the court to review the evidence and assemble for Debtor an opposition. Local Bankruptcy Rule 9014-1(f)(1)(d)(1) provides:

(d)Format and Content of Motions and Notices.

1) Contents. Except as otherwise provided in these rules, every application, motion, contested matter or other request for an order, shall be comprised of a motion, or other request for relief, notice, evidence, and a certificate of service. Unless otherwise ordered, the moving party may, but need not, file a memorandum of points and authorities in support of the motion. Opposition to any request for relief shall be governed by the same principles.

The opposition, like a motion, is separate and apart from the evidence presented. Debtor has not provided the court with any opposition to the Motion.

DISCUSSION

This court, for more than a decade has addressed with the attorneys and their clients (whether being a one off party or an institutional lender creditor who regularly appears in federal court) appearing in this federal court that the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rules are rules that must be followed, and not merely “suggestions for some other guy.”

Here, both Movant and Debtor have assigned to the court the drafting, filing, and advocating the motion and opposition from the piles of evidence presented. Movant instructs the court to review everything filed in this Bankruptcy Case to figure out the grounds that the court will state for Movant. Debtor does even less, just dumping evidence on the court without even stating any legal conclusions for which the court is to figure out the grounds for the opposition.

Discharge in This Chapter 7 Bankruptcy Case

Debtor commenced this case on January 28, 2022. On March 17, 2022, the Trustee filed a Report of No Distribution for this case, indicating that there are no assets to be administered. The deadline for a party in interest to file an objection to discharge is May 16, 2022. Notice of Bankruptcy Case, § 9; Dckt. 6.

If no objection to discharge is filed, the Debtor's discharge will be entered shortly after May 16, 2021. With the entry of the discharge, the automatic stay will terminate as to the Debtor. Given that the Trustee has filed a statement of no distribution, then the case would be closed after the discharge is entered, with the stay being terminated as to the Debtor and the vehicle being abandoned to the Debtor. 11 U.S.C. § 362(c)(2), § 554(c).

Thus, by the end of May 2022, Movant should have relief from the stay and be able to exercise its rights in the Vehicle if it cannot reach a rational economical deal with the Debtor.

Dismissal Without Prejudice

Here, Movant has not given the court any grounds upon which the requested relief is based. Debtor (whose counsel regularly appears in this court) also filed no opposition to the Motion. Though Movant has not stated any grounds, Debtor has not given the court any opposition upon which to deny the Motion.

Due to the failure to provide any grounds for which the court could grant the Motion and no opposition for which the court could deny the Motion, the court dismisses the Motion without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Balboa Thrift & Loan ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion is dismissed without prejudice.